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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Federal – State Board on Universal Service	)	CC Docket No. 96-45
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Access Charge Reform	)	CC Docket No. 96-262

COMMENTS OF
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
Valerie M. Furman

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)785-9700

Attorneys for the American Public
Communications Council

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The American Public Communications Council ("APCC") hereby submits the following comments in response to the Commission's *Public Notice*, DA 00-62, released March 24, 2000, which seeks supplemental comments on the *ex parte* memorandum in support of the revised proposal of the Coalition for Affordable Local and Long Distance Services ("CALLS") filed March 8, 2000 ("*Memorandum*").

STATEMENT OF INTEREST

APCC is a national trade association representing about 1,800 primarily independent (non-local exchange carrier) providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC actively participates in FCC proceedings affecting payphones.

SUMMARY

The CALLS plan, as modified, remains flawed because it fails to adequately address the access charges that are most burdensome to payphone service providers and users, i.e., the multi-line business subscriber line charges ("SLC") and presubscribed interexchange carrier charges ("PICC"). The imposition of the PICC and the increase in SLC since 1996 have substantially added to the cost burden of providing payphone service and result in payphone service providers paying monthly charges substantially in excess of a cost-based charge. Indeed, because FCC regulations currently require that PSPs be charged "cost-based" charges at the state level, imposing *any* SLC and PICC charges on payphone lines results in total payphone line charges that exceed cost unless SLC and PICC are offset at the state level. Therefore, the Commission should exclude payphone lines from the application of SLC and PICC. At a minimum, the CALLS plan should not be adopted unless it is modified so that multiline PICC charges are immediately eliminated and so that reductions in multiline SLC applicable to payphone lines are proportional to reductions in switched access charges.

I. THE MODIFIED CALLS PLAN DOES NOT ADDRESS THE MOST BURDENSOME CHARGES AFFECTING PAYPHONE SERVICE PROVIDERS AND OTHER SMALL BUSINESSES

The modified CALLS plan is focused overwhelmingly on providing relief from switched access charges for long distance carriers. The plan proposes that net reductions in access charges be targeted almost exclusively at usage-sensitive switched access rates. Additional reductions in switched access rates – for a total reduction of $2.1 billion – would be achieved by shifting costs to flat monthly access charges such as the SLC and

PICC. For most users, it appears that SLC and PICC would be maintained or even increased, relative to where they would be without the CALLS proposal.[1]

Concerns about this overall approach and its impact on residential and single line business users have been fully discussed by a number of parties. However, the plan *also* fails to provide significant relief from ***multiline SLC and PICC*** for small businesses that have more than one line. These small businesses -- a category that includes most payphone service providers -- have never qualified, under the Commission's rules, for the below-cost SLC for single-line users, and have been required to pay the PICC charge that is intended to cover unrecovered costs of *other* users' lines. This group should be a primary beneficiary of any access charge relief. Yet, for multiline small businesses that do not generate a substantial volume of long distance traffic, the CALLS plan offers no significant benefits. There would be no significant reductions in the monthly loop charges paid by multiline business users, beyond those already planned. For a substantial number of multiline small businesses, SLC/PICC charges actually would increase.[2] Further, the CALLS plan calls for a new universal service fund to be created and funded through a new monthly line charge element applied to all users. As a result, for many multiline small businesses that do not

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[1] APCC recognizes that the modified CALLS plan would simplify current loop charges by consolidating PICC with SLC. However, it does not appear that the total of flat monthly charges would be any lower for most subscribers as a result of the plan, compared to where they would be if the plan were not adopted.

[2] In some rural areas, it appears that PSP will be required to pay even higher SLC and PICC charges to absorb the "deficit" that will result from the modified plan's proposed access charge reductions. ***Memorandum*** at 14. Because PSPs are currently subject to SLC and PICC at the generally high levels applicable to multiline business subscribers, the "pooling" of initial year access charge reductions into the multiline business SLC and PICC charges (or, more accurately, into the new consolidated SLC charge) will result in higher access charge payments for PSPs.

generate a substantial amount of long distance traffic, total flat monthly charges are likely to increase under the CALLS plan.

Of particular concern under the Section 276 of the Communications Act,[3] the CALLS plan does nothing to reduce the access charge burden on payphone services. The traffic carried over payphone lines is primarily local, and most of the interstate traffic at payphones takes the form of "toll-free" calls for which PSPs are not billed. As a result, the switched access charge reductions proposed in the CALLS plan will not benefit payphone providers and users significantly, while the imposition of PICCs and increased SLCs has imposed a substantial burden on payphone service. PSPs will derive very little benefit from the CALLS modified plan, and in some cases will bear a greater burden than under the current access charge system. This is particularly inappropriate given the current pressures threatening the ability to PSPs of maintain adequate deployment of payphones, and given the unique cost-based pricing requirements applicable to payphone lines under the *Payphone Orders*.

II. THE CONTINUED ASSESSMENT OF SLC AND PICC ON PAYPHONE LINES CONFLICTS WITH THE FEDERAL MANDATE FOR COST-BASED PRICING OF PAYPHONE LINES

The failure of the CALLS plan to alleviate the access charge burden on small businesses is compounded in the case of payphones because it conflicts with Congressional policies and FCC actions taken in support of those policies. As noted above, in the Telecommunications Act Congress directed the FCC to promote widespread deployment

[3] Section 276 requires that the Commission's regulations "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public. . . ." 47 U.S.C. §276.

of payphone service and with the FCC's mandate . 47 U.S.C. § 276(b). In the *Payphone Orders,*[4] the FCC mandated that LEC services to PSPs, including state-tariffed payphone line charges, be "cost-based" and subject to the "new services test." *Payphone Reconsideration Order,* ¶¶162-63. *See also, e.g., Wisconsin Public Service Commission,* CCB/CPD No. 00-1, *Order Directing Filings,* DA 00-347, released March 2, 2000. Under the new services test, payphone line rates are determined based on forward-looking, unseparated costs, and may not be higher than necessary to recover all direct costs plus reasonable overhead. Id., ¶¶9-10. This unique *Payphone Order* requirement has rendered SLC and PICC superfluous for payphone lines, so that their continued application to payphone lines is likely to result in excessive prices and double recovery of payphone line costs. Nevertheless, PSPs are currently subject to SLC and PICC at the generally high levels applicable to multi-line business subscribers.

As a result of the application of the new services test to payphone lines, SLC and PICC are not needed for full recovery of payphone line costs. When states apply the new services test, they determine a rate that will recover unseparated costs – specifically, direct cost plus reasonable overhead. Thus, unless the state commission adjusts that rate to take account of SLC/PICC, the ILEC will double-recover, and the PSP will double-pay, the costs attributed to SLC/PICC.[5] Therefore, as the Bureau recently recognized, it is

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4 *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Notice of Proposed Rulemaking*, 11 FCC Rcd 6716 (1996) ("*NPRM*"); *Report and Order*, 11 FCC Rcd 20541 (1996) ("*First Order*"); *Order on Reconsideration*, 11 FCC Rcd 21233 (1996) ("*Payphone Reconsideration Order*") (collectively, the "*Payphone Orders*").

5 PSPs typically pay federal PICC charges directly to the ILEC. The reason is that many PSPs must choose "No-PIC" in order to minimize fraudulent calls being made over the ILEC network. Under the FCC's access charge reform scheme, the ILEC is able to assess the PICC directly on PSPs that choose no-PIC to prevent fraudulent calls.

necessary to take account of SLC/PICC revenues in setting cost-based payphone line rates. *See also, e.g., Wisconsin Public Service Commission,* CCB/CPD No. 00-1, *Order Directing Filings,* DA 00-347, released March 2, 2000, ¶12.

Because the *Payphone Order*'s payphone line pricing requirements were only recently clarified by the Common Carrier Bureau, there has been a three year period when state public service commissions have been left largely without guidance in the application of federal payphone line pricing requirements to state-tariffed payphone line rates. In applying the *Payphone Order* to payphone line rates, a few state commissions have taken into account the current levels of federally tariffed charges such as SLC and PICC, requiring that such charges be offset in calculating the state-tariffed line charge.[6] Other state commissions, however, have not taken action to offset SLC or PICC.[7] As a result, in those states, the ILEC double-recovers, and the PSP double-pays, all the costs assigned to PICC and SLC. To the extent that federal SLC and PICC charges are assessed by the

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Assessment of the PICC directly on the PSP causes the PSP to pay the PICC costs twice – once in the PICC itself and once in the state-tariffed rate that meets the new services test. Even when PSPs do not choose no-PIC, the ILEC uses the PICC to recover a portion of the payphone line costs from the IXC, even though those costs are already fully recovered in the line rate set under the new services test. As a practical matter, moreover, due to their very low interstate "1+" call volumes, PSPs are unlikely to be able to prevent the IXC from passing the PICC through to the PSP.

6 In fact, some state commissions have offset the SLC, but few if any have offset the PICC.

7 For example, the Kentucky public service commission declined to require ILECs to offset SLC and PICC, even though it concluded that the rates charged to PSPs would subsidize business and residential customers when the EUCL and PICC are included in the rates charged to PSPs. *In the matter of the Deregulation of Local Exchange Companies' Payphone Service*, Admin. Case No. 361, *Order on Clarification,* p. 6.

ILEC *in addition to* the charges calculated according to the new services test, the *Payphone Orders* are violated and the purpose of Section 276 of the Act is defeated.

In light of the *Payphone Order's* cost-based pricing requirement, the FCC's failure to provide timely guidance to state commissions regarding this requirement, and the uneven state commission responses to that requirement over the last three years, the continuing application of the federal SLC and PICC to payphone lines is currently causing most payphone lines to be priced substantially higher than the cost-based rates contemplated in the *Payphone Orders*. This unintended result must be considered in federal ratesetting determinations. *Conway Corp. v. Federal Power Commission,* 510 F.2d 1264 (D.C. Cir. 1975), *aff'd* 426 U. S. 271 (1976)(federal regulatory commission must consider the impact of state ratesetting on its federally ratemaking policies).

Therefore, the most appropriate modification of access charges with respect to payphone lines is to permanently exempt payphone lines from application of SLC and PICC charges. Such "special" treatment of payphone lines is appropriate because, as noted above, the *Payphone Orders* apply specific pricing requirements uniquely to payphone lines and because Section 276 of the Act specifically mandates this Commission to promote widespread deployment of payphone services.

III. THE COMMISSION SHOULD TAKE ACCOUNT OF THE UNIQUE CIRCUMSTANCES OF PAYPHONE LINES IN ITS ACTION ON THE CALLS PLAN

Although APCC believes all multiline business SLC and PICC charges should be substantially reduced under any version of the CALLS plan that is adopted, for the reasons discussed above, it is particularly important to reduce, or preferably eliminate, the SLC/PICC charges paid by PSPs. As explained above, maintaining the SLC/PICC line charges applicable to payphone lines, and excluding those line charges from the overall access charge relief scheme as proposed by CALLS in its modified plan, would improperly fail to address the above-cost payphone line pricing that has resulted from uncoordinated federal and state ratesetting and that is discouraging widespread deployment of payphone services.

With the exception of PSPs, no other multiline business subscribers are subject to a federal mandate for cost-based pricing of their subscriber lines. Therefore, the Commission shall require reductions in SLC/PICC for PSPs even if it does not do so for other multiline business subscribers.

In taking action on the CALLS plan, it is entirely necessary and proper for the Commission to recognize the distinct differences between PSPs and other classes of ILEC subscribers. PSPs are distinct from other payers of multiline business SLC and PICC for several reasons.

First, as described above, in order to implement Section 276, the FCC has required ILECs to meet the FCC's new services test pricing standard for line charges tariffed at the state level. The FCC has not required cost-based pricing at the state level for other retail ILEC services, such as business and residential local exchange service. Thus, payphone lines are unique in that federal pricing requirements for state-tariffed payphone line services ensure full recovery of all fairly attributable costs, and prohibit overall rates for payphone lines from exceeding direct costs plus a reasonable overhead loading. For the reasons discussed above, these requirements, applicable to payphone lines alone, not only render SLC and PICC superfluous but also create a direct conflict, unique to payphone lines, between the federal cost-based pricing requirements and the continued application of SLC and PICC.

Second, assessment of excessive line charges on PSPs disserves the mandate of Section 276 to promote competition and widespread deployment of payphones. Unlike business line subscribers, PSPs purchase services from local exchange carriers and interexchange carriers in order to provide a telecommunications service. Congress has required the FCC to promote competition and widespread deployment of payphone service. In order to promote the availability of telecommunications services, including payphone services, the Commission must prohibit ILECs from double-recovering the cost of the network services necessary for PSPs to make their own services available to customers.

By enacting Section 276 of the Act, Congress clearly recognized that the availability of payphones for use by the public is essential element in the broader concept of universal service, and that the widespread deployment of payphones must be encouraged. Payphones are an essential vehicle for achieving access to the network by people when they are in emergency situations, when they are away from home, and when they cannot afford their own residential telephone service. In a videotaped speech shown October 20 at APCC's 1999 Eastern Conference and Expo, Commission Chairman Kennard acknowledged that payphones play a special role in our society, and emphasized that one of the Commission's priorities is to ensure that all Americans have access to the telephone network. In a real sense, payphones function as an important form of universal service. Promoting widespread deployment of payphones has become especially important as emerging technologies such as wireless offer an increasingly popular alternative to those segments of the population that can afford to utilize wireless services. As wireless alternatives increasingly impact the market for away-from-home calling, the need to ensure adequate levels of deployment of payphone service has become more critical, because payphones remain the telephone service of last resort for the mobile public.

For all these reasons, it is appropriate and necessary for the Commission to take steps, including the elimination of separately billed SLCs and PICCs, to prevent double-recovery of and double-payment for payphone line costs. At a minimum, the Commission must immediate eliminate the multiline PICC, and must require reductions in the SLC applicable to payphone lines that are at least proportional to any reductions in switched access charges. However, the most appropriate solution is for the Commission to simply eliminate the double recovery problem by exempting payphone lines from the assessment of SLC and PICC.

CONCLUSION

The Commission should eliminate the PICC/SLC applicable to payphone lines. At a minimum, the Commission should require reductions in multiline PICC/SLC applicable to payphone lines that are at least equivalent to any switched access charge reductions arising from the CALLS plan, and should commit to taking affirmative steps to bring its access charge regime into harmony with the *Payphone Order's* mandate for cost-based pricing of payphone line services.

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Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich

Valerie M. Furman

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)785-9700

Attorneys for the American Public
Communications Council

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2000, I caused a copy of the foregoing Comments of the American Public Communications Council to be sent by U.S. mail, first class postage, pre-paid to the following:

John T. Nakahata
Harris, Wiltshire & Grannis, LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

Counsel for the Coalition for Affordable Local and Long Distance Service

ITS
1231 20th Street, N.W.
Washington, DC 20037

Wanda Harris
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Fifth Floor
Washington, D.C. 20554

Valerie Furman